

12/12/05 - (6)

**Don Johnson**

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**From:** Don Johnson  
**Sent:** Tuesday, December 06, 2005 12:24 PM  
**To:** Lauren Rosenzweig  
**Cc:** Board of Selectmen; Garry Rhodes; Roland Bartl  
**Subject:** FW: Acton - Demolition Bylaw

Lauren:

In Steve's follow-up comments below he makes an important observation that you may wish to take into consideration as you evaluate the Madison Place options.

Regards,  
Don

-----Original Message-----

**From:** Stephen Anderson  
**Sent:** Monday, December 05, 2005 9:03 PM  
**To:** Don Johnson  
**Subject:** RE: Acton - Demolition Bylaw

One more thought on the distinction between a LIP project and a standard 40B project: A developer under a LIP project must get the endorsement of the BOS. That endorsement is discretionary. So a BOS can tack a condition onto its endorsement, including, for example, a condition that the historic structure on the property be preserved. If the developer is amenable to the condition, the developer will have an expedited LIP process. If the developer is unhappy with the condition, the developer can try to go with a straight 40B.

Steve

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**From:** Don Johnson [mailto:djohnson@acton-ma.gov]  
**Sent:** Monday, December 05, 2005 12:00 PM  
**To:** Stephen D. Anderson  
**Subject:** RE: Acton - Demolition Bylaw

Thank you, Steve. I am passing this along and will get back to you if people think we need another bylaw. For the moment, I don't think we are experiencing the issue that drove Andover to create this special provision. I could be wrong ...

Regards,  
Don

-----Original Message-----

**From:** Stephen Anderson  
**Sent:** Sunday, December 04, 2005 8:12 PM  
**To:** Don Johnson  
**Subject:** RE:Acton - Demolition Bylaw

Don:

I have attached a copy of the 2003 SJC *Dennis* case which determined that the Dennis historic committee is a "local board" such that its customary power to determine whether a project's exterior features are "appropriate" for the historic district may instead be exercised by the ZBA

as part of a comprehensive permit proceeding. By analogy, the Acton Historical Commission's powers under Chapter N devolve to the ZBA in a c. 40B proceeding.

The question is a little more complicated when we are talking about a LIP project. Under 760 CMR 45.00, the Local Initiative Program enables three types of local initiatives:

- The first type of initiative recognizes municipal efforts to work under the local zoning to produce qualifying units which are called "Local Initiative Units".
- The second type of initiative is more formally structured as a "Local Housing Program" which sets out a comprehensive set of rules for production of qualifying units. Production of units pursuant to a "Local Housing Program" may be authorized by a comprehensive permit although units produced by a Local Housing Program also may be authorized by the local zoning (these Local Housing Program units produced without a comprehensive permit will also qualify as Local Initiative Units).
- The third type of initiative is a program with rules set out in Guidelines issued by the Department of Housing and Community Development. This program is available for use by a city or town which desires to produce low or moderate income housing where the housing is not permitted by zoning and the city or town does not have a Local Housing Program under which a comprehensive permit could be issued. The Local Initiative General Program offers a convenient means for these communities to take advantage of the planning flexibility available through a comprehensive permit for production of affordable housing.

So if the LIP units are being produced under local zoning, Chapter N would apply as usual. But if the LIP units are being produced under a comprehensive permit, the *Dennis* rule applies and the ZBA would administer Chapter N. The Applicant could seek a waiver of the requirements of Chapter N in the comprehensive permit hearing, and the ZBA would be authorized to grant a waiver of those requirements in an appropriate case.

I mentioned that Andover has adopted a zoning bylaw aimed at preserving historic structures that might otherwise be demolished in a 40B proceeding or a "mansionization" setting. I have attached the provisions of that Bylaw below. Andover has had some notable success in preserving historic houses under this bylaw, and perhaps a similar version could be adopted by Acton.

Steve

#### **Andover Bylaw - From Ordinance.com**

### **7.9. Dimensional Special Permit - Historic Preservation**

#### **7.9.1. Purpose and Intent:**

The purpose of this by-law is to encourage the preservation of buildings, structures, sites and settings of historic significance, by allowing such buildings or features to remain in place, or be moved to another location rather than be demolished or otherwise compromised. The by-law gives the Board of Appeals authority to issue a special permit modifying certain dimensional standards for the creation of new lots, or for the use of existing lots for purposes of preservation of historic structures or buildings as defined herein.

#### **7.9.2. Historic Structures Defined:**

For purposes of a Dimensional Special Permit for Historic Preservation the historic building or structure must be located in the Town of Andover and must be listed on one

of the following:

1. The National Register of Historic Places;
2. The State (Commonwealth of Massachusetts) Register of Historic Places; and
3. The Andover Historic Building Survey.

#### 7.9.3. Parent Parcel Defined:

A parent parcel is the parcel of land that is to be divided.

#### 7.9.4. Standards and Regulations:

The following specific standards shall be applied to a dimensional special permit for historic preservation:

1. The lot must be located in the SR A, SRC or SRB zoning district.
2. Any new lot created under this by-law in any single family residential zoning district shall contain not less than one-half the minimum lot area for the zoning district in which it is proposed, and such minimum lot area shall be contiguous upland, free of wetlands.
3. Lot frontage and building setbacks on new lots created under this by-law shall be as follows:
  - a. In the SRA district: Frontage 50 feet; Front - 25 feet; Side - 10 feet; Rear 30 feet;
  - b. In the SRB district: Frontage 75 feet; Front - 35 feet; Side - 15 feet; Rear 30 feet;
  - c. In the SRC district: Frontage 100 feet; Front - 35 feet; Side - 20 feet; Rear 30 feet.
4. Any new lot created under this by-law shall have its required frontage on a public way as measured at the street line.
5. Any new lot created under this by-law in the Single Residence A or Single Residence B zoning district, shall be served by municipal sanitary sewer and water.
6. Any new lot created under this by-law in the Single Residence C zoning district shall be served by municipal water, and if sanitary sewer is not available the lot shall be in fact capable of supporting an on-site sewage disposal system, or in the event that said lot is not serviced by municipal sanitary sewer and water at the time of the zoning board hearing, but the zoning board finds that sewer will be available, the zoning board shall make as a condition of its approval that no occupancy permit shall issue until the lot is serviced by municipal sanitary sewer and water.
7. Other than when there is an existing historic structure on the parent parcel which is the subject of a related special permit application, no new lot may be created that would render the parent parcel of land non-conforming with regard to dimensional requirements, including but not limited to area and frontage.
8. A vacant existing non-conforming lot need not meet the standards set forth in sections 1 through 3 above; however, the provisions of 4 and 5 will apply.
9. The special permit granting authority shall determine whether or not a historic structure or building can be placed on a lot without detrimental effect on abutting properties or the street on which the lot has its frontage.

#### 7.9.5. Findings Required:

Priority in granting a Dimensional Special Permit for Historic Preservation shall, in all cases, be placed upon keeping buildings and structures in place, rather than moving them to other locations, provided that the existing site can be shown to represent valid

historical setting and context. Moving of structures or buildings to other locations shall be considered only if no other preservation measures are practical or reasonable on the existing site, or if the proposed removal is to return a building or structure to an original or more historically accurate location.

In addition to the findings required under Section 9.4.2. of the zoning by-law and the foregoing standards and regulations, the permit granting authority shall consider the following specific items:

1. That the modification of dimensional requirements is necessary to protect, preserve or maintain a historic structure or building;
2. That the proposed work, including any relocation or reconstruction, preserves, to the maximum extent feasible, the historical and architectural features of the structure or building;
3. That in the absence of a special permit, destruction of a historic structure or building will result.

#### 7.9.6. Conditions to be Imposed:

If the zoning board of appeals grants the special permit, it shall impose, as minimum conditions, the following:

1. In the event of a catastrophic event which results in damage to the historic structure such that the historic structure cannot be repaired, the owner may rebuild on the lot provided that the new dwelling does not contain more than the same interior floor area as the historic structure and meets one of the following requirements:
  - a. the new dwelling is placed in the existing footprint; or
  - b. the new dwelling is built in conformity with the zoning side, front and rear setbacks in effect at the time of rebuilding
2. Prior to the move the Board of Selectman, of the Town of Andover shall approve the route and the timing of the move of the building or structure.
3. In the event that the owner of the lot wishes to make changes to the historic structure after it is relocated, it must submit any changes to the Preservation Commission for its review and approval. If the Preservation Commission determines that the change is not a minor change, the owner must seek a modification of the special permit from the Zoning Board.
4. Upon the appeal period expiring, the applicant shall submit the approved plan to the Planning Board for an "approval not required endorsement" Pursuant to Chapter 41, Section 81P of the General Laws. Such an endorsement shall be a condition of the special permit approval.
5. The owner shall record at the Essex North District Registry of Deeds an Historic Preservation Restriction in the form approved by the zoning board of appeals, and approved and endorsed by the Massachusetts Historical Commission in accordance with Chapter 184, Section 32, of the General Laws, which shall at -a minimum provide for conditions under which alterations, additions or modifications may be made, and in the event of damage to the historic structure such that the historic structure cannot be repaired, the owner may rebuild on the lot provided that the new dwelling does not contain more than the same interior floor area as the historic structure and meets one of the following requirements: (i) the new dwelling is placed in the existing footprint; or (ii) the new dwelling is built in conformity with

the zoning side, front and rear setbacks in effect at the time of rebuilding. Any mortgagee shall subordinate its mortgage to this restriction.

6. When the decision of the Board of Appeals on the application for a dimensional special permit for historic preservation has become final, the applicant shall submit the plan upon which the decision is based to the Planning Board for certification as an Approval Not Required plan pursuant to Chapter 81; Section 41P of the General Laws. The Notice of Decision of the Board of Appeals, the approved and endorsed Historic Preservation Restriction with any required mortgagee subordination, and the Approval Not Required plan certified by the Planning Board shall be recorded concurrently at the Essex North District Registry of Deeds.

#### 7.9.7. Application Requirements and Procedure:

Sixteen (16) copies of an application for a Dimensional Special Permit for Historic Preservation shall be filed with the Board of Appeals. Copies of the application will be distributed to the interdepartmental review team and a review shall be conducted involving but not limited to staff representatives of Planning, Preservation Commission, any applicable Historic District Commission, Building, Health, Conservation, School, Public Works, Police and Fire. Comments from the interdepartmental review shall be submitted to the Zoning Board of Appeals. The application shall include the following information:

1. A plan prepared by a Registered Land Surveyor and/or Professional Engineer showing the lot proposed to be created or used for the preservation of an historic structure or building. The plan shall be suitable for purposes of submission as an Approval Not Required plan. The plan shall be at a scale of 1" = 20', on a sheet size not smaller than 11" X 24", and not larger than 18" X 24", and shall show the following information:

- a. All existing and proposed property lines with bearings and distances;
- b. If the application is for the creation of a new lot, then the parent parcel from which the lot is being taken shall also be shown at the same scale;
- c. The location and size of all existing structures or buildings on and adjacent to the proposed lot, and the distances between all existing and proposed structures or buildings;
- d. The public way on which the existing or proposed lot will have its frontage;
- e. Proposed front, side and rear building setback lines;
- f. Existing and proposed topography (grading);
- g. Significant trees or other natural features;
- h. The location and type of utilities serving the lot;
- i. Wetlands delineation;
- j. The name of the owner and all parties having any interest in the lot, including book and page numbers of the documents at the Registry of Deeds which describe such an interest;
- k. a copy of the deed of ownership shall be included with the application; and

1. all easements on the lot.

2. If the historic structure is going to be relocated, a map showing the route over which the historic structure or building will be moved;

3. If the historic structure is going to be relocated, a letter from the Police Chief, Fire Chief, Tree Warden of the Town and the Director of Public Works approving the route. It is the responsibility of the applicant to contact and obtain approvals (if

needed) from utility companies having overhead cables, lines or wires along the route, and from the Massachusetts Highway Department if a state roadway is involved and from the Director of Public Works, Police Chief and Fire Chief of any city or town included on the route. The applicant is responsible for any costs associated with police supervision along the route;

4. An approval letter from the Preservation Commission, certifying that the structure is an historic structure, as defined in this by law and any recommended conditions for the special permit;

5. A statement of any changes to be made to the historic structure;

6. The provisions of Sections 9.4.1. through 9.4.7. of the Zoning By-law shall apply to the application, hearing, decision, conditions and lapse of a dimensional special permit for historic preservation;

7. A Dimensional Special Permit issued under this by-law shall contain an account of all required findings and considerations made by the permit granting authority in its decision to allow such exception to the by-laws.

**\*\*Webmasters Note:** The previous section, 7.9, has been added as per an update approved at a town meeting held on 4/28/03.

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**From:** Don Johnson [mailto:djohnson@acton-ma.gov]  
**Sent:** Wednesday, November 30, 2005 2:48 PM  
**To:** Stephen D. Anderson  
**Subject:** Demolition Bylaw

Steve:

The Selectmen had a presentation from Ron Peabody's staff Monday evening regarding Madison Place, a new LIP development they are proposing for property at 737-741 Main Street. This development would be almost identical to Franklin Place in size and scope. The property contains an existing single family dwelling that would be demolished to make room for the development. As noted below, this dwelling is listed on our Cultural Resource Inventory and falls under the control of our Town Bylaws, Chapter N "Procedure for the Demolition of Historically or Architecturally Significant Buildings". Are we right to assume the LIP/40B process trumps this bylaw too?

Regards,  
 Don

-----Original Message-----

**From:** Garry Rhodes  
**Sent:** Wednesday, November 30, 2005 12:57 PM  
**To:** Don Johnson  
**Cc:** Roland Bartl  
**Subject:** Madison Place

You have asked if the Chapter N "Procedure for the Demolition of Historically or Architecturally Significant Buildings" would be a 'local Board' within the meaning of comprehensive permits. It is my opinion it is. There was a case *Dennis Housing Corp. v. Zoning Bd. of Appeals of Dennis* 439 Mass. 71 (2003) they held Dennis historic district committee was a 'local board'. The court further noted the list of local agencies comprised in the definition of 'local board' was not intended to be a list of the precise names of

local agencies but rather encompasses local agencies and officials performing comparable functions.

-----Original Message-----

**From:** Roland Bartl  
**Sent:** Wednesday, November 30, 2005 11:54 AM  
**To:** Don Johnson; Garry Rhodes  
**Subject:** RE: Madison Place

It is on the Cultural Resource Inventory, which brings it under the Historical Commission's jurisdiction according to Chapter N of the Town Bylaws. Chapter N is the Town's "Demolition Delay Bylaw" which requires a hearing before demolition of a resource, and which gives the Hist. Commission to delay the demolition for 6 months while they try to find ways to preserve it. There is some State umbrella law under which town's can adopt a demo delay bylaw, but I don't know off hand what it is. Steve would know.

*Roland Bartl, AICP  
Town Planner, Town of Acton  
472 Main Street  
Acton, MA 01720  
978-264-9636*

-----Original Message-----

**From:** Don Johnson  
**Sent:** Wednesday, November 30, 2005 11:44 AM  
**To:** Garry Rhodes; Roland Bartl  
**Subject:** Madison Place

Can either of you tell me how the house on this property is listed? (Under what law or bylaw and under whose jurisdiction?) I need to confirm with Steve Anderson as to how this applies to the 40B process.

Don